

§ 45.46

your-own tobacco in packages that do not meet the marking requirements of § 40.216b(a) until October 1, 2000.

[T.D. ATF-427, 65 FR 40051, June 29, 2000]

§ 45.46 Tax-exempt label.

Every package of tobacco products, and cigarette papers and tubes removed under this part shall have the words "Tax-Exempt. For Use of U.S. Not To Be Sold." adequately imprinted on the package or on a label securely affixed thereto.

(72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 58, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

Subpart F—Records

§ 45.51 Supporting records.

(a) *Records of removals.* Every manufacturer who removes tobacco products, and cigarette papers and tubes under this part must, in addition to the records kept under part 40 of this chapter, keep a supporting record of such removals and must make appropriate entries therein at the time of removal. The supporting record for each removal must show:

- (1) The date of removal;
- (2) The name and address of the Federal agency to which shipped or delivered;
- (3) The kind and quantity and,
- (4) for large cigars, the sale price.

(b) *Records of returns.* If any tobacco products, or cigarette papers or tubes removed under this part are returned to the factory, such returns must be noted in the supporting record.

(c) *Commercial records.* Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(d) *Retention period.* The manufacturer must retain the supporting record for 3 years following the close of the year covered therein. The record must be made available for inspection

27 CFR Ch. I (4–1–04 Edition)

by any appropriate ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512–0363)

(See 26 U.S.C. 5741)

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999, as amended by T.D. ATF-472, Feb. 27, 2002]

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Subpart A—Application of 26 U.S.C. 6423, as Amended, to Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes

GENERAL

Sec.

- 46.1 Scope of regulations in this subpart.
- 46.2 Meaning of terms.
- 46.3 Applicability to certain credits or refunds.
- 46.4 Ultimate burden.
- 46.5 Conditions to allowance of credit or refund.
- 46.6 Requirements for persons intending to file claim.

CLAIM PROCEDURE

- 46.7 Execution and filing of claim.
- 46.8 Data to be shown in claim.
- 46.9 Time for filing claim.

BOND

- 46.10 Bond, Form 2490.
- 46.11 Corporate surety.
- 46.12 Deposit of securities in lieu of corporate surety.
- 46.13 Authority to approve bonds.
- 46.14 Termination of liability.
- 46.15 Release of pledged securities.

PENALTIES

- 46.16 Penalties.

Subpart B—Administrative Provisions

- 46.21 Delegations of the Director.
- 46.22 Forms prescribed.

Subpart C—Disaster Loss Claims

- 46.71 Scope of subpart.

DEFINITIONS

- 46.72 Meaning of terms.

PAYMENTS

- 46.73 Circumstances under which payment may be made.

CLAIMS PROCEDURE

- 46.74 Execution of claims.
- 46.75 Required information for claim.
- 46.76 Supporting evidence.
- 46.77 Time and place of filing.
- 46.78 Action by appropriate ATF officer.

DESTRUCTION OF TOBACCO PRODUCTS, AND
CIGARETTE PAPERS AND TUBES

- 46.79 Supervision.

PENALTIES

- 46.80 Penalties.

ADMINISTRATIVE PROVISIONS

- 46.81 [Reserved]

Subparts D–F [Reserved]

Subpart G—Dealers in Tobacco Products

- 46.161 Scope of subpart.
- 46.162 Territorial extent.
- 46.163 Meaning of terms.
- 46.164 Authority of ATF officers to enter premises.
- 46.165 Interference with administration.
- 46.166 Dealing in tobacco products.
- 46.167 Liability to tax.
- 46.168 Liability to penalties and forfeitures.

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Cigarettes
Held for Sale on January 1, 2000 and
on January 1, 2002

GENERAL

- 46.191 Purpose of this subpart.
- 46.192 Terms used in this subpart.
- 46.193 Floor stocks tax defined.
- 46.194 Persons liable for this tax.
- 46.195 Persons not liable for this tax.
- 46.196 Floor stocks requirements.

INVENTORIES

- 46.201 Establish quantities of cigarettes.
- 46.202 Inventory for cigarettes with export markings.
- 46.203 How to identify cigarettes with export markings.
- 46.204 When to take inventory.
- 46.205 Physical inventory requirements.
- 46.206 Book or record inventory requirements.
- 46.207 Cigarettes in transit.
- 46.208 Guidelines to determine title of cigarettes in transit.
- 46.209 Cigarettes in a foreign trade zone.
- 46.210 Cigarettes held in bond.
- 46.211 Unmerchutable cigarettes.
- 46.212 Cigarettes in vending machines.
- 46.213 Cigarettes marked “not for sale” or “complimentary”.

COMPUTE TAX LIABILITY

- 46.221 Determine amount of tax due.
- 46.222 Floor stocks tax rates.
- 46.223 Apply tax credit.

FILING REQUIREMENTS

- 46.231 How to obtain a tax return.
- 46.232 Prepare tax return.
- 46.233 How to pay.
- 46.234 Tax return due dates.
- 46.235 Filing requirements for multiple locations.
- 46.236 Cigarettes in a warehouse.
- 46.237 Controlled group members.

RECORDS

- 46.241 Required records.
- 46.242 Period for maintaining records.
- 46.243 Cigarettes at multiple locations.
- 46.244 Where records must be maintained.
- 46.245 Errors in records.

CLAIMS

- 46.251 Before filing a claim.
- 46.252 When to file a claim for errors on return.
- 46.253 How to file a claim for errors on return.
- 46.254 Destruction of cigarettes by a Presidentially-declared major disaster.
- 46.255 Additional reasons for filing a claim.

ALTERNATE METHODS OR PROCEDURES

- 46.261 Purpose of an alternate method or procedure.
- 46.262 How to apply for approval.
- 46.263 Conditions for approval.
- 46.264 Withdrawal of an alternate method or procedure.

ATF AUTHORITIES

- 46.270 [Reserved]
- 46.271 Entry, examination and testimony.
- 46.272 Issuance of summons.
- 46.273 Refusing entry or examination.
- 46.274 Penalties for failure to comply.

AUTHORITY: 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

SOURCE: Redesignated by T.D. ATF–457, 66 FR 32220, June 14, 2001.

EDITORIAL NOTE: Nomenclature changes to part 46 appear by T.D. ATF–457, 66 FR 32220, 32221, June 14, 2001.

CROSS REFERENCE: For exportation of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax, see part 44.

Subpart A—Application of 26 U.S.C. 6423, as Amended, to Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes

SOURCE: T.D. 6395, 24 FR 599, Jan. 28, 1959, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

GENERAL

§ 46.1 Scope of regulations in this subpart.

The regulations in this subpart relate to the limitations imposed by 26 U.S.C. 6423, on the refund or credit of tax paid or collected in respect to any article of a kind subject to a tax imposed by 26 U.S.C. chapter 52.

[T.D. ATF-48, 44 FR 55857, Sept. 28, 1979]

§ 46.2 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section.

Article. The commodity in respect to which the amount claimed was paid or collected as a tax.

Claimant. Any person who files a claim for a refund or credit of tax under this subpart.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Owner. A person who, by reason of a proprietary interest in the article, furnished the amount claimed to the claimant for the purpose of paying the tax.

Person. An individual, a trust, estate, partnership, association, company, or corporation.

Tax. Any tax imposed by 26 U.S.C. chapter 52, or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under such chapter, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an exaction denominated a “tax”, and any penalty,

addition to tax, additional amount, or interest applicable to any such tax.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 46.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 46.3 Applicability to certain credits or refunds.

The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

- (a) Any claim for drawback,
- (b) Any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, lost, or destroyed, and
- (c) Any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an article seized and forfeited, or destroyed, as contraband.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-42, 42 FR 8372, Feb. 10, 1977]

§ 46.4 Ultimate burden.

For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

- (a) He has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,
- (b) No understanding or agreement exists for any such relief or shifting, and
- (c) If he has neither sold nor contracted to sell the articles involved in such claim, he agrees that there will be no such relief or shifting, and furnishes bond as provided in § 46.10.

§ 46.5 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that he is otherwise legally entitled to credit or refund of the amount claimed, establishes:

- (a) That he bore the ultimate burden of the amount claimed, or
- (b) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or
- (c) That (1) the owner of the article furnished him the amount claimed for payment of the tax, (2) he has filed with the appropriate ATF officer the written consent of such owner to the allowance to the claimant of the credit or refund, and (3) such owner satisfies the requirements of paragraph (a) or (b) of this section.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.6 Requirements for persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

- (a) File a claim, as provided in § 46.7,
- (b) Comply with any other provisions of law or regulations which may apply to the claim, and
- (c) If, at the time of filing the claim, neither he nor the owner has sold or contracted to sell the articles involved in the claim, file a bond on ATF Form 5620.10, as provided by § 46.10.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

CLAIM PROCEDURE

§ 46.7 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with instructions for the form. (For provisions relating

to hand-carried documents, see § 70.304 of this chapter.) The claim shall set forth each ground upon which the claim is made in sufficient detail to apprise the appropriate ATF officer of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made a part of the claim the supporting data required by § 46.8. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

[T.D. 7008, 34 FR 3672, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-251, 52 FR 19342, May 22, 1987; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 46.7, must set forth or contain the following:

- (a) A statement that the claimant paid the amount claimed as a "tax" as defined in this subpart.
- (b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms or returns covering the payments for which refund or credit is claimed.
- (c) The written consent of the owner to allow the refund or credit to the claimant (where the owner of the article on which the tax was paid has furnished the claimant the amount claimed for the purpose of paying the tax).
- (d) If the claimant or the owner, as the case may be, has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant or the owner, as the case may be, agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.

(e) If the claim is for refund of a floor stocks tax, or of an amount resulting from an increase in rate of tax applicable to an article, a statement as to

§ 46.9

whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and, if so, the date of the increase, together with full information as to the amount of such price increase.

(f) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions of allowance set forth in § 46.5.

The appropriate ATF officer may require the claimant to furnish as a part of the claim such additional information as he may deem necessary.

[T.D. ATF-42, 42 FR 8372, Feb. 10, 1977, as amended by T.D. ATF-472a, 67 FR 63544, Oct. 15, 2002]

§ 46.9 Time for filing claim.

No credit or refund of any amount of tax to which the provisions of this subpart apply shall be made unless the claimant files a claim therefor within the time prescribed by law and in accordance with the provisions of this subpart.

[T.D. ATF-42, 42 FR 8373, Feb. 10, 1977]

BOND

§ 46.10 Bond, Form 2490.

Each claim for a refund or credit of tax on articles which the claimant or the owner, as the case may be, has neither sold nor contracted to sell at the time of filing of the claim must be accompanied by a bond on ATF Form 5620.10. The bond shall be executed by the claimant or the owner of the articles, as the case may be, in accordance with the provisions of this subpart and the instructions printed on the form. Such bond shall be conditioned that there will be no relief or shifting of the ultimate burden of the tax to any other person. The penal sum shall not be less than the amount of tax claimed on all articles which have not been sold or contracted for sale at the time of filing of the claim. Bonds required by this subpart shall be given with corporate surety or with collateral security. A

27 CFR Ch. I (4-1-04 Edition)

separate bond must be filed for each claim.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.11 Corporate surety.

(a) Surety bonds required under the provisions of this subpart may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Limitations concerning corporate sureties are prescribed by the Secretary in the current revision of the Treasury Department Circular No. 570 (refer to paragraph (c) of this section). The surety shall have no interest whatever in the business covered by the bond.

(b) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The appropriate ATF officer who is authorized to approve the bond may, whenever he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies) is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (6 U.S.C. 6, 7); sec. 202, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

[T.D. ATF-92, 46 FR 46923, Sept. 23, 1981, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.12 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR part 225.

§ 46.13 Authority to approve bonds.

An appropriate ATF officer may approve all bonds required by this subpart.

[T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.14 Termination of liability.

Bonds on ATF Form 5620.10 will be terminated by the appropriate ATF officer on receipt of satisfactory evidence that the person giving the bond has disposed of the articles covered by the bond and that he bore the ultimate burden of the amount claimed and that no understanding or agreement exists whereby he will be relieved of such burden or shift such burden to another person.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.15 Release of pledged securities.

Securities of the United States, pledged and deposited as provided by § 46.12, shall be released only in accordance with the provisions of 31 CFR part 225. When the appropriate ATF officer is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the appropriate ATF officer may, for proper cause, extend the date of release for such additional length of time as he deems necessary.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

PENALTIES

§ 46.16 Penalties.

It is an offense punishable by fine and imprisonment for anyone to make or cause to be made any false or fraudulent claim upon the United States, or to make any false or fraudulent state-

ments, or representations, in support of any claim, or to falsely or fraudulently execute any documents required by the provisions of the internal revenue laws, or any regulations made in pursuance thereof.

Subpart B—Administrative Provisions

SOURCE: T.D. ATF-472, 67 FR 8880, Feb. 27, 2002, unless otherwise noted.

§ 46.21 Delegations of the Director.

The regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46. ATF delegation orders, such as ATF O 1130.28, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150-5950, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

§ 46.22 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. You must furnish all of the information required by each form as indicated by the headings on the form and the instructions for the form, and as required by this part. You must file each form in accordance with its instructions.

(b) You may request forms from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153-5950, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

Subpart C—Disaster Loss Claims**§ 46.71 Scope of subpart.**

This subpart prescribes the requirements necessary to implement 26 U.S.C. 5708, concerning payments which may be made by the United States in respect to the internal revenue taxes paid or determined and customs duties paid on tobacco products, and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly

§ 46.72

27 CFR Ch. I (4-1-04 Edition)

authorized official by reason of a disaster occurring in the United States on or after September 3, 1958.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

DEFINITIONS

§ 46.72 Meaning of terms.

When used in this subpart, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not listed which are in the same general class.

Act. The Excise Tax Technical Changes Act of 1958 (Pub. L. 85-859, 72 Stat. 1275), enacted September 2, 1958.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR parts 45 and 46.

Claimant. The person who held the tobacco products or cigarette papers and tubes for sale at the time of the disaster and who files claim under this subpart.

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, The Department of the Treasury, Washington, DC.

Disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe which has occurred in any part of the United States on and after the day following the date of enactment of the act and which the President of the United States has determined, under the Act of September 30, 1950 (64 Stat. 1109; 42 U.S.C. 1855), was a “major disaster” as defined in such Act.

Duly authorized official. Any Federal, State, or local government official in whom has been vested authority to condemn tobacco products and cigarette papers and tubes made the subject of a claim under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Removal or remove. The removal of tobacco products or cigarette papers or tubes from the factory, or release of such articles from Customs custody.

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with §§ 40.22 or 275.39 and used in computation of the tax.

Tax paid or determined. The internal revenue tax on tobacco products and cigarette papers and tubes which has actually been paid, or which has been determined pursuant to 26 U.S.C. 5703(b), and regulations thereunder, at the time of their removal subject to tax payable on the basis of a return.

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

United States. When used in a geographical sense, includes only the States, and the District of Columbia.

[T.D. 6392, 24 FR 5300, June 30, 1959]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 46.72, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PAYMENTS

§ 46.73 Circumstances under which payment may be made.

An appropriate ATF officer shall allow payment (without interest) of an amount equal to the amount of tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the amount of customs duty paid, on tobacco products, and cigarette papers and tubes removed, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a disaster occurring in the United States on and after September 3, 1958. Such payments may be made only if, at the time of the disaster, such tobacco products, or cigarette papers or tubes were being held for sale by the claimant. No payment shall be made under this subpart with respect to any amount of tax or duty claimed or to be

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 46.75

claimed under any other provision of law or regulations.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

CLAIMS PROCEDURE

§ 46.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999]

§ 46.75 Required information for claim.

The claim should contain the following information:

(a) That the tax on such tobacco products, or cigarette papers or tubes has been paid or determined and customs duty has been paid;

(b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;

(c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;

(d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;

(e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,

(f) That the claimant is entitled to payment under this subpart, and

(g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products, substantially as shown in the examples below:

[Example using 1993–1999 Rates]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$1.125 per thousand	\$22.50
1,000	Large cigars—sale price \$100/thousand.	12.75% of sale price	12.75
500	Large cigars—sale price \$236/thousand.	\$30 per thousand	15.00
10,000	Small cigarettes	\$12 per thousand	120.00
5,000	Large cigarettes	\$25.20 per thousand	126.00
2,000 sets	Cigarette papers—50 per set	\$0.0075 per set	15.00
1,000 sets	Cigarette papers—100 per set	\$0.015 per set	15.00
1,000	Cigarette tubes	\$0.015 per 50 tubes	0.30
100 lbs	Chewing tobacco	\$0.12 per pound	12.00
200 lbs	Snuff	\$0.36 per pound	72.00
100 lbs	Pipe tobacco	\$0.675 per pound	67.50
300 lbs	Roll-your-own tobacco	\$0 per pound	
Total claimed			478.05

[Example using 2000–2001 Rates]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$1.594 per thousand	\$31.88
1,000	Large cigars—sale price \$100/thousand.	18.063% of sale price	18.06
500	Large cigars—sale price \$236/thousand.	\$42.50 per thousand	21.25
10,000	Small cigarettes	\$17.00 per thousand	170.00
5,000	Large cigarettes	\$35.70 per thousand	178.50
199,975	Cigarette papers	\$0.0106 per 50 papers	42.40
1,000	Cigarette tubes	\$0.0213 per 50 tubes	0.43
100 lbs	Chewing tobacco	\$0.17 per pound	17.00
200 lbs	Snuff	\$0.51 per pound	102.00
100 lbs	Pipe tobacco	\$0.9567 per pound	95.67

§ 46.76

27 CFR Ch. I (4–1–04 Edition)

[Example using 2000–2001 Rates]

Quantity	Article	Rate of tax	Amount
300 lbs	Roll-your-own tobacco	\$0.9567 per pound	287.01
Total claimed			964.20

[Example using rates for 2002 and After]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$1.828 per thousand	36.56
1,000	Large cigars—sale price \$100/thousand.	20.719% of sale price	20.72
500	Large cigars—sale price \$236/thousand.	\$48.75 per thousand	24.38
10,000	Small cigarettes	\$19.50 per thousand	195.00
5,000	Large cigarettes	\$40.95 per thousand	204.75
199,975	Cigarette papers	\$0.0122 per 50 papers	48.80
1,000	Cigarette tubes	\$0.0244 per 50 tubes	0.49
100 lbs	Chewing tobacco	\$0.195 per pound	19.50
200 lbs	Snuff	\$0.585 per pound	117.00
100 lbs	Pipe tobacco	\$1.0969 per pound	109.69
300 lbs	Roll-your-own tobacco	\$1.0969 per pound	329.07
Total claimed			1,105.96

[T.D. ATF–420, 64 FR 71945, Dec. 22, 1999]

§ 46.76 Supporting evidence.

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

[T.D. ATF–420, 64 FR 71946, Dec. 22, 1999]

46.77 Time and place of filing.

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for duty on imported products, must be filed with the appropriate ATF officer.

[T.D. ATF–420, 64 FR 71946, Dec. 22, 1999]

§ 46.78 Action by appropriate ATF officer.

The appropriate ATF officer must act upon each claim for payment (without interest) of an amount equal to the tax paid or determined filed under this subpart and must notify the claimant. Claims and supporting data involving

customs duties will be forwarded to the Commissioner of Customs with a summary statement of such officer's findings.

[T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

DESTRUCTION OF TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

§ 46.79 Supervision.

Before payment is made under this subpart in respect of the tax, or tax and duty, on tobacco products, or cigarette papers or tubes rendered unmarketable or condemned by a duly authorized official, such tobacco products, or cigarette papers or tubes must be destroyed by suitable means under the supervision of an appropriate ATF officer who will be assigned for that purpose by another appropriate ATF officer. However, if the destruction of such tobacco products, or cigarette papers or tubes has already occurred, and if the appropriate ATF officer who acts on the claim is satisfied with the supervision of such destruction, ATF supervision will not be required.

[T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

PENALTIES

§ 46.80 Penalties.

Penalties are provided in 26 U.S.C. 7206 and 7207 for the execution under

the penalties of perjury of any false or fraudulent statement in support of any claim and for the filing of any false or fraudulent document under this subpart. All provisions of law, including penalties, applicable in respect of internal revenue taxes on tobacco products, and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this subpart, be applied in respect of the payments provided for in this subpart to the same extent as if such payments constituted refunds of such taxes.

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

ADMINISTRATIVE PROVISIONS

§ 46.81 [Reserved]

Subparts D–F [Reserved]

Subpart G—Dealers in Tobacco Products

SOURCE: T.D. 6573, 26 FR 8202, Aug. 31, 1961, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 46.161 Scope of subpart.

The regulations in this subpart relate to the purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 46.162 Territorial extent.

The provisions of the regulations in this subpart shall apply in the several States of the United States and the District of Columbia.

§ 46.163 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, each of the following terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, words in the singular form shall include the plural, and

words importing the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not enumerated which are in the same general class.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

Dealer. Any person who sells, or offers for sale, at wholesale or retail levels, any cigars or cigarettes after removal.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which tobacco products are put up by the manufacturer or the importer and offered for delivery to the consumer.

Person. An individual, partnership, association, company, corporation, estate, or trust.

Removal or remove. The removal of tobacco products from the factory or release from Customs custody, including the smuggling or other unlawful importation of such articles into the United States.

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

U.S.C. The United States Code.

[T.D. 6573, 26 FR 8202, Aug. 31, 1961, as amended by T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 46.163, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 46.164 Authority of ATF officers to enter premises.

Any appropriate ATF officer may enter in the daytime any premises where tobacco products are kept or

§ 46.165

stored, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any appropriate ATF officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any appropriate ATF officer or permit him to examine such products shall be liable to the penalties prescribed by law for the offense. Operators of vending machines shall make the tobacco products in their machines available for inspection upon the request of any appropriate ATF officer.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

§ 46.165 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any appropriate ATF officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

[T.D. 6573, 26 FR 8202, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, Feb. 27, 2002]

§ 46.166 Dealing in tobacco products.

(a) All tobacco products purchased, received, possessed, offered for sale, sold or otherwise disposed of, by any dealer must be in proper packages which bear the mark or notice as prescribed in parts 270 and 275 of this chapter. Tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer. Where a vending machine is used, tobacco products must similarly

27 CFR Ch. I (4-1-04 Edition)

be vended in proper packages or directly from such packages.

(b) Tobacco products manufactured in the United States and labeled for exportation under chapter 52 of title 26, U.S.C. may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. This applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) the export label.

(c) For penalty and forfeiture provisions applicable to the selling, relanding or receipt of articles which have been labeled or shipped for exportation, see § 275.83 of this chapter.

[T.D. ATF-465, 66 FR 45618, Aug. 29, 2001]

§ 46.167 Liability to tax.

Any dealer who, with intent to defraud the United States, possesses tobacco products (a) upon which the tax has not been paid or determined in the manner and at the time prescribed in parts 40 and 275 of this chapter or (b) which, after removal without payment of tax pursuant to section 5704, I.R.C., and regulations issued thereunder, have been diverted from the applicable purpose or use specified in that section or (c) which are not put up in packages prescribed in parts 40 and 275 of this chapter or are put up in packages not bearing the marks and notices prescribed in such regulations shall be liable for a tax equal to the tax on such products.

(72 Stat. 1424; 26 U.S.C. 5751)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-460, 66 FR 390 93, July 27, 2001]

§ 46.168 Liability to penalties and forfeitures.

Any dealer who fails to comply with the provisions of this subpart becomes

liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

AUTHORITY: Section 9302, Pub.L. 105-33, 111 Stat. 251, unless otherwise noted.

SOURCE: T.D. ATF-423, 64 FR 71958, Dec. 22, 1999, unless otherwise noted.

GENERAL

§ 46.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

§ 46.192 Terms used in this subpart.

(a) *Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart by ATF Order 1130.28, Delegation of the Director's Authorities in parts 45 and 46.

(b) *Controlled group.* Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more

than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(d) *Large cigarettes.* Cigarettes weighing more than three pounds per thousand.

(e) *Person.* When the term "person" is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

(f) *Small cigarettes.* Cigarettes weighing not more than three pounds per thousand.

(g) *Tax increase dates.* For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

[T.D. ATF-423, 64 FR 71958, Dec. 22, 1999, as amended by ATF-457, 66 FR 32220, June 14, 2001; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

§ 46.193 Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

§ 46.194 Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid or taxdetermined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to §§ 46.207 and 46.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 46.209).

§ 46.195 Persons not liable for this tax.

If you do not hold any taxpaid or taxdetermined cigarettes for sale at the moment a tax increase is effective, you are not liable for this tax.

§ 46.196 Floor stocks requirements.

(a) *Take an inventory.* Establish the quantity of cigarettes subject to the

§ 46.201

27 CFR Ch. I (4–1–04 Edition)

floor stocks tax held for sale at the beginning of the tax increase dates (January 1, 2000 and January 1, 2002). You may take a physical inventory or you may use a book or record inventory, as specified in §§ 46.205 and 46.206.

(b) *Compute tax amount.* Compute the amount of tax for the cigarettes held for sale at the start of each of the tax increase dates. Refer to the table shown in § 46.222. Apply the tax credit as provided by § 46.223.

(c) *File tax return.* After you have computed the floor stocks tax, you must file a return for each tax increase date if tax is due.

(d) *Maintain records.* Maintain all records used to determine the quantity of cigarettes on hand at the start of each tax increase date. You must also maintain all computations used to determine the amount of tax owed. Refer to § 46.241.

(Approved by the Office of Management and Budget under control number 1512–0554)

INVENTORIES

§ 46.201 Establish quantities of cigarettes.

You must take an inventory to establish the quantity of cigarettes subject

to the floor stocks tax. You may take a physical inventory or a book or record inventory.

§ 46.202 Inventory for cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

§ 46.203 How to identify cigarettes with export markings.

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words “Tax-exempt. For use outside U.S.” or “U.S. Tax Exempt. For use outside U.S.”; or

(b) A stamp, sticker, or notice, required by a foreign country or possession of the United States, which identifies such country or possession.

§ 46.204 When to take inventory.

You must take your physical inventory or book or record inventory during the periods noted in the table to this section.

Date of floor stocks tax	Not earlier than	No later than
January 1, 2000	December 26, 1999	January 10, 2000.
January 1, 2002	December 26, 2001	January 10, 2002.

§ 46.205 Physical inventory requirements.

Your physical inventory must include a written record of:

(a) *Quantity and Type.* You must record the quantity and type of ciga-

rettes in sufficient detail to determine the tax rate as stated in § 46.222 and whether the cigarettes have export markings as stated in § 46.203. The following chart provides the type of cigarette and method to use to determine quantities:

Type or kind	Inventory method
Small cigarettes (Class A).	Count the: <ul style="list-style-type: none"> • Number of cigarettes without export markings. • Number of cigarettes with export markings.
Large cigarettes (Class B).	Count the: <ul style="list-style-type: none"> • Number of large cigarettes 6.5” or less in length without export markings. • Number of large cigarettes 6.5” or less in length with export markings. • Number of each size of large cigarettes more than 6.5” in length without export markings. • Number of each size of large cigarettes more than 6.5” in length with export markings.

(b) *Date.* Date(s) the inventory was taken.

(c) *Name.* Name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.

(d) *Location.* Record where the inventory was taken (street address, city and State).

(e) *Time.* The physical inventory must be taken between the dates shown in § 46.204. If you do not take the physical inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled. The inventory records must be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 2000 and January 1, 2002, respectively. These records must include all supporting records of receipt and disposition.

§ 46.206 Book or record inventory requirements.

You may use a book or record inventory if you have source records that show:

(a) The quantity of receipts and dispositions of all cigarettes.

(b) The actual type and quantities of cigarettes on hand as if a physical inventory had taken place the moment the tax increase became effective. Refer to § 46.205(a).

(c) The name and address of the consignor and consignee.

(d) The date of receipt or disposition of the cigarettes.

(e) The brand name of each product.

(f) If you do not take the inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled as described in § 46.205(e).

§ 46.207 Cigarettes in transit.

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

§ 46.208 Guidelines to determine title of cigarettes in transit.

You may use the following guidelines to establish who holds title to cigarettes in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.

(1) *Freight on board (F.O.B.) destination.* The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.

(2) *Freight on board (F.O.B.) shipping point.* The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

§ 46.209 Cigarettes in a foreign trade zone.

You are liable for the tax and must take an inventory when either of the following conditions apply:

(a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or

(b) Cigarettes are held by a Customs officer pursuant to the second proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

§ 46.210 Cigarettes held in bond.

If you are a manufacturer or an export warehouse proprietor and hold cigarettes in ATF bond on the tax increase dates, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

§ 46.211 Unmerchantable cigarettes.

Any cigarettes that you hold for return to a supplier because of some defect are not subject to the floor stocks

§ 46.212

tax. You must prepare a separate list of these items. You cannot include as unmerchandise any items that may be held because of poor market demand or to reduce your inventory.

§ 46.212 Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

- (a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and
- (b) The cigarettes are ready to be dispensed by a consumer.

§ 46.213 Cigarettes marked “not for sale” or “complimentary”.

Cigarettes marked “not for sale” or “complimentary” that are part of a sale (for example, buy two packs and

27 CFR Ch. I (4–1–04 Edition)

get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by §§ 46.205 and 46.206. Cigarettes that are marked “not for sale” or “complimentary” and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

COMPUTE TAX LIABILITY

§ 46.221 Determine amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in § 46.222. Multiply the amount of each type of cigarette by the applicable tax rate.

§ 46.222 Floor stocks tax rates.

Type or kind	January 1, 2000	January 1, 2002
Small Cigarettes (3 pounds or less per 1,000)	\$5 per 1,000 or 10 cents per 20	\$2.50 per 1,000 or 5 cents per 20
Large Cigarettes (more than 3 pounds per 1,000)	\$10.50 per 1,000 or 21 cents per 20	\$5.25 per 1,000 or 10.5 cents per 20
Special rule: For large cigarettes over 6½ inches long determine the rate for each length. Multiply the rate prescribed for small cigarettes by the whole number that represents the addition of each 2¾ inches and any fraction of the length, as one (1)		

§ 46.223 Apply tax credit.

You are allowed a credit against your floor stocks tax of up to \$500. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

FILING REQUIREMENTS

§ 46.231 How to obtain a tax return.

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

- (a) ATF web site (www.atf.treas.gov);
- (b) ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or
- (c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

§ 46.232 Prepare tax return.

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 46.233 How to pay.

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (a) of this section.

- (a) *Electronic fund transfer.* If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

- (1) ATF web site (www.atf.treas.gov);

Alcohol and Tobacco Tax and Trade Bureau, Treasury**§ 46.244**

(2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

(b) [Reserved]

§ 46.234 Tax return due dates.

Tax increase date	File tax return no later than:
January 1, 2000	March 31, 2000 ¹
January 1, 2002	April 1, 2002

¹ Section 9302(j) of P.L. 105-33 states that the due date is April 1, 2000. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax for this period is due on March 31, 2000 since April 1, 2000, falls on a Saturday.

§ 46.235 Filing requirements for multiple locations.

You may file a consolidated return if all locations or places of business have the same employer identification number. You also have the option of filing a separate return for each place of business or location.

§ 46.236 Cigarettes in a warehouse.

(a) Cigarettes warehoused at one or more locations must be reported on the tax return representing the location where the cigarettes will be offered for sale.

(b) Cigarettes offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The cigarettes can be re-

ported by a single location or apportioned among several locations.

§ 46.237 Controlled group members.

If you are a member of a controlled group, you must file if the combined liability with other members is more than \$500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in § 46.223 if it is apportioned to you as a member of the controlled group.

RECORDS**§ 46.241 Required records.**

You must maintain:

- (a) Inventory records.
- (b) Tax computations.
- (c) Names, addresses and employer identification number of all controlled group members, if applicable.
- (d) Copy of tax return, if you filed one.
- (e) List of locations and warehouses covered by the tax return.
- (f) Any approved alternate method or procedure under 46.263.

§ 46.242 Period for maintaining records.

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown in the table to this section.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return	3 years from the tax increase date.
Filed a tax return on or before the due date of the return	3 years from the due date of the tax return, as specified in § 46.234.
Filed a tax return after the due date of the tax return	3 years from the date of filing the tax return.

§ 46.243 Cigarettes at multiple locations.

You must maintain a list of each place where you hold cigarettes subject to the floor stocks tax. This list must include:

- (a) Address.
- (b) Name of the proprietor (if different).
- (c) The employer identification number (if different).

(d) Quantity and classification of all cigarettes held at each location.

§ 46.244 Where records must be maintained.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

§ 46.245

§ 46.245 Errors in records.

If your inventory records or tax computation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax computation records contain an error that resulted in an underpayment of tax, you must file an additional tax return on which you show and pay the additional tax, interest and any applicable penalties.

CLAIMS

§ 46.251 Before filing a claim.

Before you can file a claim for refund, you must have paid your floor stocks tax on ATF F 5200.28T and subsequently determined that you overpaid the tax.

§ 46.252 When to file a claim for errors on return.

You must file the claim within 3 years from the due date of filing the tax return or 2 years from the time the tax was paid, whichever is later.

§ 46.253 How to file a claim for errors on return.

Your claim must be filed on ATF Form 2635 (5620.8). The claim must include detailed and sufficient evidence to support why you believe the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1512-0554)

§ 46.254 Destruction of cigarettes by a Presidentially-declared major disaster.

After you have paid the floor stocks tax, you may file a claim for refund of tax on cigarettes lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Refer to subpart C of this part for the time, evidence and procedures for filing a claim.

§ 46.255 Additional reasons for filing a claim.

(a) *Manufacturer.* 27 CFR part 40, subparts I and K state the times, reasons and procedures for filing a claim for refund.

27 CFR Ch. I (4-1-04 Edition)

(b) *Export warehouse proprietor.* 27 CFR part 44, subpart G, states the time, evidence and procedures for filing a claim for refund.

(c) *Exported taxpaid.* If cigarettes are shipped from the United States, you may file a claim for drawback of taxes under subpart K of 27 CFR part 44.

(d) *Importer.* An importer may follow the procedures for filing a claim as described in 27 CFR part 275, subpart I.

[T.D. ATF-423, 64 FR 71958, Dec. 22, 1999, as amended by T.D. ATF-460, 66 FR 39093, July 27, 2001; T.D. ATF-464, 66 FR 43479, Aug. 20, 2001]

ALTERNATE METHODS OR PROCEDURES

§ 46.261 Purpose of an alternate method or procedure.

An alternate method or procedure is a different way of performing a requirement than is provided in this subpart of regulations. You would only make a request if you wanted to perform a requirement in a different way than is provided in this subpart.

§ 46.262 How to apply for approval.

You must apply in writing to the National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263. You must describe the alternate method or procedure and reasons you wish to use it. You cannot use the alternate method until you receive written approval from ATF.

(Approved by the Office of Management and Budget under control number 1512-0554)

§ 46.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

- (a) There is good cause for its use.
- (b) It is consistent with the purpose and effect intended by the prescribed method or procedure.
- (c) It affords equivalent security to the revenue.
- (d) It is not contrary to any provision of law.
- (e) It will not result in an increase in cost to the Government.
- (f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes.

(g) It is not a method or procedure that relates to the payment or collection of tax.

§ 46.264 Withdrawal of an alternate method or procedure.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. ATF will give you a written notice of the withdrawal.

ATF AUTHORITIES

§ 46.270 [Reserved]

§ 46.271 Entry, examination and testimony.

Appropriate ATF officers, in performing official duties, may enter any premises to examine cigarettes subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate ATF officers may audit and examine all cigarettes, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining or collecting floor stocks tax. They may take testimony (under oath) of any person when inquiring as to proper payment of floor stocks taxes.

§ 46.272 Issuance of summons.

Appropriate ATF officers can issue summonses when there is no Justice Department referral under the author-

ity stated in 27 CFR 70.22. The summons will state a place and time for such items or person to appear. ATF will issue a summons to require:

(a) Any books of account or other data pertaining to liability of floor stocks tax.

(b) Any person liable for the floor stocks tax or having possession of books of account or other data.

(c) Any other appropriate person in connection with the books or tax liability.

§ 46.273 Refusing entry or examination.

If you or another person in charge of the premises refuses to admit any appropriate ATF officer or prevents any appropriate ATF officer from examining the records or cigarettes, you may be liable for the penalties described in 26 U.S.C. 7342 and 7212, respectively.

§ 46.274 Penalties for failure to comply.

If you fail to follow these regulations, ATF may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against you if you do not timely file your tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.